

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGENFIELD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-58

BERGENFIELD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Bergenfield Education Association against the Bergenfield Board of Education. The grievance contests the transfer of a custodian from one school to another. The Association also filed an unfair practice charge alleging that the transfer was motivated by anti-union animus. The Commission finds that transfers of school board employees between work sites are not mandatorily negotiable or legally arbitrable. The Association's contention that this transfer was motivated by anti-union animus may be litigated in the unfair practice proceeding.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 95-96

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Appearances:

For the Petitioner, Young, Dimiero & Sayovit, attorneys  
(Joanne L. Butler, of counsel)

For the Respondent, Springstead & Maurice, attorneys  
(Alfred F. Maurice, of counsel)

DECISION AND ORDER

On December 21, 1994, the Bergenfield Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bergenfield Education Association. The grievance contests the transfer of a custodian from one school to another. The Association has also filed an unfair practice charge alleging that the transfer was motivated by anti-union animus.

The parties have filed certifications, exhibits, and briefs. These facts appear.

The Association represents the Board's non-supervisory personnel, including custodians. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration.

Robert O'Brien is a tenured custodian and has worked for the Board since 1967. He also sits on the Association's Board of Directors and serves as an Association delegate for the custodial staff.

Before July 1, 1994, O'Brien worked on a 7:00 a.m. to 4:00 p.m. shift at Roy E. Brown Middle School. On that date, he was transferred to an 11:00 p.m. to 7:00 a.m. shift at Bergenfield High School. According to a certification submitted by the Board's business administrator, O'Brien's transfer was one of a series of transfers necessitated by the unavailability of two employees and the difficulty of getting work completed on the midnight shift and O'Brien was selected for transfer to the midnight shift because he was a reliable employee who would not need on-site supervision. According to a certification submitted by the Association's president, O'Brien was transferred because the business administrator was upset by O'Brien's successful prosecution of a grievance and wanted O'Brien removed from the building where he was a union delegate. The competing certifications also dispute whether other custodians had been involuntarily transferred from day shifts to night shifts and whether the Board usually based shift assignments on seniority.

The Association filed a grievance contesting the transfer. The Board denied the grievance and the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the Board may have.

Transfers of school board employees between work sites are not mandatorily negotiable or legally arbitrable. Ridgefield Park; N.J.S.A. 34:13A-25. The Association's contention that this transfer was motivated by anti-union animus may be litigated in the unfair practice proceeding. Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1984).<sup>1/</sup>


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<sup>1/</sup> We accordingly deny the Association's request for a hearing on this petition.

ORDER

The request of the Bergenfield Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: May 23, 1995  
Trenton, New Jersey  
ISSUED: May 24, 1995